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USDOC FOR 4510/ITA/IEP/ANESA/OA/JDIEMOND
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SUBJECT: DTI DISCUSSES BEE WITH COMMERCE DAS VINEYARD

REF: Pretoria 847

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1. (SBU) Summary. At a meeting on February 18 with Ms. Polo Radebe, Director of Black Economic Empowerment in the Department of Trade and Industry, Commerce DAS Holly Vineyard expressed U.S. support for the goals of BEE but underlined the need for flexibility in implementing its provisions, particularly with respect to the issue of equity. Ms. Radebe acknowledged the concerns of U.S. companies. She discussed the recently released draft Codes of Good Practice and the implications for all sectors, including those already covered by other charters and legislation. She said there is still a lot of debating going on and many possibilities of how BEE will apply to foreign investors. DTI needs to find a balance and some level of flexibility given that South Africa wants to increase FDI and cannot afford to lose the FDI it has. End summary.

2. (SBU) Commerce DAS Holly Vineyard met Ms. Polo Radebe, Director of Black Economic Empowerment (BEE), and Ms. Rashmee Ragaven, Deputy Director of the same office, on February 18 at the Department of Trade and Industry (DTI). Economic officer and commercial officer accompanied her. DAS Vineyard reiterated U.S. support for the goals of BEE but underlined the need for flexibility in implementing its provisions, particularly with respect to the issue of equity. She stressed the difficulty that U.S. firms would face in meeting rigid requirements on equity. She noted that companies have expressed frustration with trying to comply with different scorecards.

3. (SBU) Ms. Radebe replied that the South African government was well aware of these concerns. She explained that DTI issued the "Codes of Good Practice on Black Economic Empowerment" in order to deal with questions about interpretation. For example, there were different scorecards in different charters. The idea of the Codes is to bring these issues together. She provided DAS Vineyard with a BEE strategy document and a 130-page draft on the Codes that are out for comment due by March 7. "All will be required to use the Codes," said Radebe, adding that there would be a twelve-month grace period provided in order to align the various codes currently issued.

4. (SBU) Of the comments DTI has received so far, one of the most frequent questions has been what are the implications for other BEE initiatives where the standards are different, for example in the financial services charter (FSC) and the mining charter. Radebe said there is a need for standardization. For example, she noted there are different definitions of a "black" person. She suggested that sectors might have to go back with a "re-think" of their charters because there are a lot of fundamental differences. There are major concerns by the financial services people about what the Codes may imply for the FSC. The mining sector is also unhappy about elements in the Codes that are not in the mining charter. "Most likely they will have to comply with the Codes," she said, adding there "will be convergence over time." Radebe said there would be discussions with the Department of Minerals and Energy (DME). One of the difficulties is that the mining charter came as result of a different piece of legislation, the mining act. There are questions about whether the mining charter complies with the Codes and with the BEE Act.

5. (SBU) Radebe indicated that DTI would need to find a balance in implementing BEE. "We appreciate the concerns that companies have, and are also looking at ways to bring certainty." She said there is still a lot of debating going on and many possibilities of how BEE will apply to foreign investors. One option would be generally to provide no exemption from equity for foreign firms. There is some support for this view given that some companies have been able to comply in other emerging developing countries with

similar local requirements. While multinationals have to be part of the process, there is also the issue of how local firms would feel if multinationals got an exemption that did not apply to local firms. At the same time, she acknowledged that some foreign companies might have a policy on global equity restrictions. Still, she suggested that all companies needed to think about how they could make a contribution to BEE and not see it as a penalty. They should also see how BEE might benefit the company in 10 years even if there were costs today. In any event, DTI did want some level of flexibility given that South Africa wants to increase FDI and cannot afford to lose the FDI it has.

16. (SBU) DAS Vineyard noted that U.S. companies operating in South Africa have difficulty in explaining BEE to their headquarters. U.S. companies that are looking to invest in South Africa have a similar problem. Radebe responded that part of the problem is the way South Africa has "marketed" it. She suggested they ought to speak better in business terms, in rands and cents. After it reaches a decision regarding BEE policy for multinationals, one possibility would be for DTI to conduct an international road show to explain what South Africa is doing. In closing, Vineyard encouraged DTI to continue the dialog with the United States on BEE.

17. (U) Commerce DAS Holly Vineyard cleared this cable.

FRAZER